REMARKS

Reconsideration and withdrawal of the pending rejections are respectfully requested in view of the following remarks.

Rejection under 35 U.S.C. § 102(b)

Claims 1, 3, 4 and 6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Argenta, et al. (US Patent No. 5,636,643) (hereafter Argenta '643). A personal interview was conducted with the Examiner by Applicant's representative, Che Chereskin, on March 27, 2008 in connection with the present application, in which amendments to the claims were worked out to overcome the Argenta reference. These amendments were made in an RCE filed on April 30, 2008, resulting in the claims as presently pending. In the subsequent Office Action, mailed July 23, 2008, the Examiner withdrew the rejection over Argenta.

Claim 1 specifies that the flow of blood is arrested from an "active bleeding site". Support for this term is found in the present specification at page 12, line 23 to page 13, line 17 where the application of the vacuum instrument to an active bleeding site is described. The specification teaches that "the vacuum device 20 maybe utilized as a tamponade for bleeding tissue" (page 12, lines 23-24), for example application to an internal tissue during surgery (page 12, line 24 to page 13, line 4; Figure 14A). The vacuum instrument may also be used for exterior surfaces as well (page 13, lines 5-13).

Claim 1 also specifies "releasing the vacuum upon slowing or arresting the flow". Support for this language is found in cancelled claim 2. It is clear from the present claim language that the vacuum is released as soon as the bleeding has slowed or stopped. The vacuum is not maintained after bleeding has been brought under control.

Claim 6 also relates to the timing of the release of the vacuum. Claim 6 recites that "the vacuum is released when the flow has slowed and the bleeding site can be further treated". Support for the limitation recited in claim 6 is found on page 12, lines 29-30.

Argenta '643 do not teach all of the elements of claim 1. Argenta '643 do not teach application of a vacuum to an active bleeding site. Indeed, Argenta '643 teach away from the claimed invention in teaching that if the patient starts to bleed, the vacuum should be shut off (col. 8, lines 27-41). In particular, that "[i]nterrupting the application of suction to the appliance

29 is desirable to prevent exsanguination in the unlikely event a blood vessel ruptures under the wound cover 18 during treatment" (col. 8, lines 31-34) Accordingly, Argenta '643 does not teach "positioning the opening of a vacuum cup over said the active bleeding site" as presently set forth in claim 1. Argenta '643 teach that the vacuum should be shut off if bleeding commences.

Furthermore, Argenta '643 do not teach "releasing the vacuum upon slowing or arresting the flow". Argenta '643 teach that the "time period for use of the method on a wound may preferably be at least 12 hours, but can be, for example, extended for one or more days. There is no upper limit beyond which use of the method is no longer beneficial; the method increases the rate of closure up to the time the wound actually closes" (col. 12, lines 61-66).

While Applicant claims applying a vacuum to an active bleeding site until the bleeding is arrested or slowed, Argenta '643 would not even be likely to apply a vacuum to a bleeding site at all. According to the online medical dictionary available at http://medical-dictionary.thefreedictionary.com/Wounds, a "wound occurs when the integrity of any tissue is compromised (e.g. skin breaks, muscle tears, burns, or bone fractures). A wound may be caused by an act, such as a gunshot, fall, or surgical procedure; by an infectious disease; or by an underlying condition." The same dictionary referred to above indicates that "once the bleeding has been stopped, cleaning and dressing the wound is important for preventing infection." Thus, while a wound may sometimes involve bleeding, a wound remains long after bleeding has been stopped. To the extent that a wound treated by Argenta is also a bleeding site, Argenta teaches to maintain the vacuum for extended periods of12 hours or longer, and possibly until complete wound closure. As such, Argenta does not teach the recited step of "releasing the vacuum upon slowing or arresting the flow" of blood.

Furthermore, Example 9 of Argenta '643 teaches application of a vacuum to enhance blood flow, not arrest or slow blood flow as claimed by Applicant. Accordingly, Example 9 clearly teaches away from the claimed invention. There is no teaching in Argenta '643 that would lead one of ordinary skill in the art to apply a vacuum to an active bleeding site and remove it upon slowing or arresting the flow as claimed.

Thus, to the extent that Argenta '643 teach anything regarding the flow of blood, it is directed to enhancement of blood flow. See, e.g. Col. 1, lines 38-48; Col. 13, lines 37-41 and Example 9 at Col. 21, which is entitled "Enhancement of Blood Flow." Argenta '643 also mentions that one of the dangers of the application of the vacuum to a wound is the aspiration of blood from the rupture of an underlying blood vessel. In that circumstance, Argenta recommends that the vacuum be shut off (col. 8, lines 27-41). This is in direct contrast to the present invention, which is directed to applying vacuum to an active bleeding site and releasing the vacuum upon slowing or arresting of the blood flow from the active bleeding site.

Because Argenta teaches away from the presently claimed invention, the claimed invention would not even be obvious over the Argenta reference. *See*, M.P.E.P. 2145. Accordingly, the presently pending claims are fully patentable over the Argenta reference.

Rejection of Claim 5 under 35 U.S.C. § 103

Claim 5 was rejected as obvious over Argenta in view of Hill. However, Claim 5 is dependent on Claim 1 and is patentable over Argenta for the same reasons discussed above in connection with Claim 1. The Hill reference teaches nothing that would lead one of skill in the art toward the opposite of Argenta as presently claimed. Accordingly, Claim 5 is patentable over the cited combination of references.

Rejection of Claim 7 under 35 U.S.C. § 103

Claim 7 was rejected as obvious over Argenta alone. Claim 7 incorporates the language suggested by the Examiner during the interview of March 2008 and is directed to immediate release of the vacuum once the flow has been arrested or slowed. Support is found generally on page 11, lines 9-10. Thus, Claim 7 relates to an invention in which the device is placed on the bleeding site while it is bleeding and removed immediately upon arresting or slowing of the bleeding. Argenta teaches the exact opposite of this device by teaching that the device is placed on a wound to enhance the flow of blood and that the device should be released when aspiration of blood from the rupture of an underlying blood vessel occurs

CONCLUSION

In view of the foregoing Remarks, withdrawal of all rejections is respectfully requested. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully requested to contact the undersigned at the telephone number appearing below.

Respectfully submitted,

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